

# 2007 ATTORNEY GENERAL'S REPORT TO THE LEGISLATURE

DECEMBER 2007

**Talis Colberg, Attorney General**





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December 2007

Dear Alaska Legislators and Fellow Alaskans,

There are almost three hundred attorneys in the Department of Law. They and their staff should be an inspiration to all Alaskans.

About 2500 years ago, three hundred Spartans made history by defending their social order against seemingly insurmountable odds at the Battle of Thermopylae. The Spartan story did not end particularly well for the three hundred (they all died), but it did end well for Sparta and the social order. The story of the three hundred at Thermopylae is still celebrated as a great moment in history because the Spartans inspired contemporary Greeks to rally, ultimately defeat, and then expel what had seemed to be an overwhelming force.

If you take the time to read the 2007 Annual Report which may be found at [www.law.state.ak.us](http://www.law.state.ak.us), it will become apparent that like the Spartans, the attorneys and staff of Department of Law are vital to Alaska's social order. As only one example, the department regularly earns through settlements more than it spends. Then try to imagine life under the premise of Shakespeare's sadly popular fantasy of a world without lawyers. There would be no criminal prosecutions, no accountability for unpaid child support, no protection against consumer fraud or environmental pollution, no collection of funds through enforcement actions or legal settlements.

The historian Ernie Bradford in his book *Thermopylae: Battle for the West* asserted that the struggle in 480 B.C. was all about the Greek "belief in the individual human right to dissent." We lawyers embrace that summation and see ourselves as guardians of the same premise. We honor and participate in the system of resolving disputes where the right to disagree is respected and managed in an orderly way.

There was a Spartan saying that warriors were either to come back in victory with their shield—or on their shield. For several years our District Attorneys have asked for a tangible display of their position. I am pleased to report that when our District Attorneys go to court now, they carry a shield of sorts, their badges.

Capable attorneys and staff need proper compensation to do their jobs, and over the years, our people have started to slip behind their colleagues. The Spartans ultimately lost at Thermopylae because they were not given all of the support they needed.

The purpose of my analogy to Sparta is not to alarm readers into thinking that the Department is about to be overwhelmed. If that were my intent, the Custer story would have been far more appropriate. I hope the Sparta story focuses the reader's view through the long lens of historical context. Read the report and appreciate that good people are working hard to do good things for our State, and we should honor them for that.

Very truly yours,



Talis J. Colberg  
Attorney General

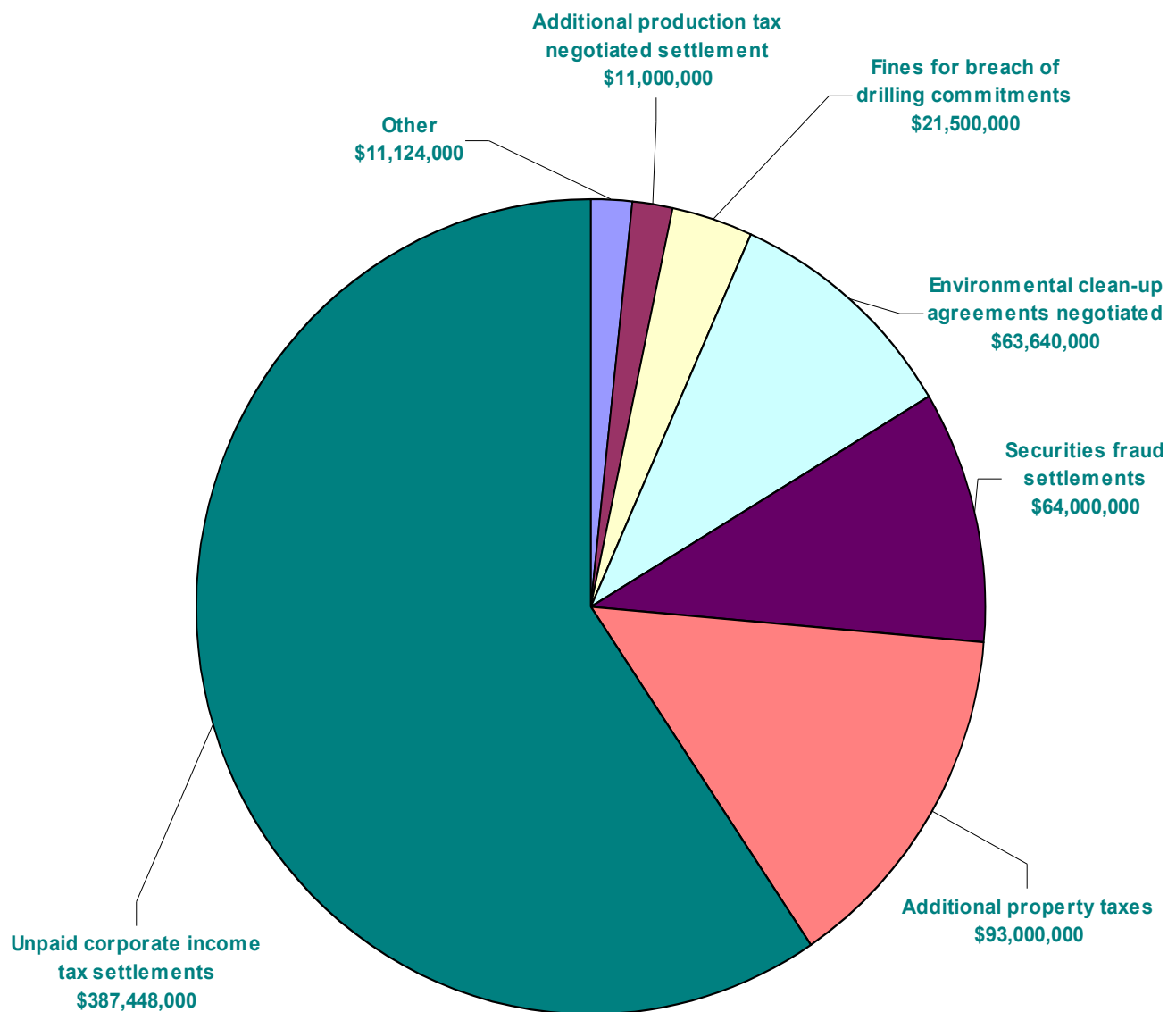


Starting in 2007 the DAs, ADAs and Paralegals of the Criminal Division will carry identifying badges.





Department of Law  
Recoveries, Collections and Savings  
**\$651,712,000**



## Alaska Department of Law—*Talis Colberg*, Attorney General

*Monica Jenicek*, Special Assistant to the Attorney General

<b>Criminal Division, Rick Svobodny, Deputy Attorney General</b> <b>Susan McLean</b> , Chief Assistant Attorney General	<b>Civil Division, Craig Tillery, Deputy Attorney General</b> <b>Nancy R. Gordon</b> , Statewide Office Chief
<b>Special Prosecution &amp; Appeals</b> <i>Douglas Kossler</i> , Appeals Chief <i>James Fayette</i> , Special Prosecutions Chief	<b>Child Protection</b> <i>Carla Raymond</i> , Chief Assistant Attorney General
<b>Juneau District Attorneys' Office</b> <i>Doug Gardner</i> , District Attorney	<b>Collections and Support</b> <i>Stacy Steinberg</i> , Chief Assistant Attorney General
<b>Ketchikan District Attorneys' Office</b> <i>Stephen West</i> , District Attorney	<b>Commercial and Fair Business</b> <i>Signe Andersen</i> , Chief Assistant Attorney General
<b>Sitka District Attorneys' Office</b> <i>Julie Willoughby</i> , Assistant District Attorney	<b>Environmental Law</b> <i>Steve Mulder</i> , Chief Assistant Attorney General
<b>Barrow District Attorneys' Office</b> <i>Robin Koutchak</i> , Assistant District Attorney	<b>Human Services</b> <i>Stacie Kraly</i> , Chief Assistant Attorney General
<b>Kotzebue District Attorneys' Office</b> <i>Paul Roetman</i> , Assistant District Attorney	<b>Labor and State Affairs</b> <i>Jan DeYoung</i> , Chief Assistant Attorney General
<b>Nome District Attorneys' Office</b> <i>John Earthman</i> , District Attorney	<b>Legislation and Regulations</b> <i>Deborah Behr</i> , Chief Assistant Attorney General
<b>Anchorage District Attorneys' Office</b> <i>Adrienne Bachman</i> , District Attorney	<b>Natural Resources</b> <i>Elizabeth Barry</i> , Chief Assistant Attorney General
<b>Kodiak District Attorneys' Office</b> <i>Stephen Wallace</i> , District Attorney	<b>Oil and Gas</b> <i>Tina Kobayashi</i> , Chief Assistant Attorney General
<b>Fairbanks District Attorneys' Office</b> <i>J. Michael Gray</i> , District Attorney	<b>Opinions, Appeals and Ethics</b> <i>Joanne Grace</i> , Chief Assistant Attorney General
<b>Dillingham District Attorneys' Office</b> <i>Susan Mitchell</i> , Assistant District Attorney	<b>Regulatory Affairs and Public Advocacy</b> <i>Daniel Patrick O'Tierney</i> , Chief Assistant Attorney General
<b>Palmer District Attorneys' Office</b> <i>Roman Kalytiak</i> , District Attorney	<b>Torts and Workers' Compensation</b> <i>Gail Voigtlander</i> , Chief Assistant Attorney General
<b>Kenai District Attorneys' Office</b> <i>June Stein</i> , District Attorney	<b>Transportation</b> <i>James Cantor</i> , Chief Assistant Attorney General
<b>Bethel District Attorneys' Office</b> <i>Lance Joanis</i> , District Attorney	<b>Administrative Services Division</b> <i>Betty Martin</i> , Director <i>Bob Meiners</i> , Deputy Director

## *Department Organizational Chart*

## Department of Law Mission Statement

### Protecting Alaska's Future

#### Mission & Core Services

The Department of Law protects Alaska's children, communities, consumers, natural resources, financial assets and state's rights. Its mission is to provide legal services to state government and to prosecute crime. The Department of Law's core services are reflected in its three core divisions also known as results delivery units (RDU).



**The Criminal Division** RDU protects the public by prosecuting all violations of state criminal law committed by adults, and a large portion of the serious crimes committed by juveniles. The Criminal Division provides assistance to victims and witnesses of crimes and supports the efforts of criminal justice agencies to detect and punish crime through investigation, trial and conviction; it also provides general legal services to the Departments of Corrections and Public Safety relating to their criminal justice activities. The Criminal Division has District Attorney Offices in thirteen Alaskan communities. Rick Svobodny (*left*) is the Deputy Attorney General overseeing the Criminal Division.

**The Civil Division** RDU supports the Civil Division of the Department of Law. The Civil Division serves the interests of Alaska's citizens by providing legal counsel to the executive branch in all civil actions. The Division defends and prosecutes all civil litigation to which the State is a party, and handles legal matters for and provides legal advice to the governor, executive branch agencies, and – upon request – the legislative and judicial branches. Craig Tillery (*right*) is the Deputy Attorney General overseeing the Civil Division.



**The Administration and Support Division** RDU includes the Office of the Attorney General and the Administrative Services Division. The Office of the Attorney General provides overall management of the Department of Law. The Attorney General, as principle executive officer of the Department, is responsible for both the legal and administrative aspects of the Department's operations. The Administrative Services Division provides the core administrative services that are essential to the day-to-day operation of the Department of Law and to managing the resources of the Department. Betty Martin (*left*) is the Division Director.

## PROTECTING ALASKA'S CHILDREN & OTHER VULNERABLE CITIZENS

Protecting Alaska's children is one of the most important tasks facing the Department of Law. One significant way the Department protects Alaska's children is through the prosecution of child abuse and neglect in confidential Children in Need of Aid (CINA) cases. This year the Child Protection section prosecuted approximately 3,000 ongoing CINA cases, up from 2,000 cases in 2005, moving toward the goal of achieving permanency for children, whether it is reunification with their family or other permanent placement, such as adoption or guardianship. Statewide attorneys carry an average of 125 plus cases, significantly higher than the 100 cases per full time attorney suggested by the U. S. Department of Health and Human Services, Administration for Children and Families.

The section is assisting the Human Services section of the Department in representing the Office of Children's Services in a lawsuit filed by four Alaska Native villages alleging violations of the Indian Child Welfare Act, the Adoption and Safe Families Act, and the Multi-Ethnic Placement Act. Another important piece of pending litigation will determine whether Indian tribes can initiate cases in tribal court under the federal Indian Child Welfare Act.

Attorneys in the Human Services section

provide legal assistance to the Department of Health and Social Services on issues arising from the state's health services, social services, and welfare programs. These attorneys have had a large increase in work due to changes in the regulations related to Medicaid waivers.

Changes to the licensing structure as a result of SB 125 have also resulted in work load increases, and changes to the Certificate of Need program have resulted in increased litigation. Changes to the Adult Protective Services comment process have resulted in increased scope and complexity of hearings.



Assistant Attorney General Stacie Kraly, Human Services Section Chief, receives the 2007 Attorney General's Leadership Award from Attorney General Talis Colberg.

## PROTECTING ALASKA'S FINANCES

The Department recovered, collected, and saved a total of over \$651,712,000 this year. (See chart on page 5). Many sections of the Department contributed to this achievement. Below is a snapshot of some of their efforts.

### Oil, Gas and Mining

Most of the state's operating revenues are derived from oil and gas corporate income taxes, production taxes, and royalties on Alaska North Slope crude oil. The value of that crude for production tax and royalty purposes is largely determined by the price that ANS commands in its destination markets, less the costs of transporting it to those markets. The transportation costs consist of tariffs and the producers' tanker costs. The Oil, Gas and Mining section of the Department performs legal services related to these and other oil and gas development is-

sues. The Department's efforts have aided the State in the collection of additional property taxes, fines for breach of drilling commitments (Point Thomson Unit), unpaid production tax corporate income tax, and other disputes. These amounts accounted for approximately half of the recoveries, collections and savings achieved by Department of Law efforts this year.

The Department expended substantial resources to monitor the TransAlaska Pipeline System (TAPS) owners' compliance with the 1985 TAPS Settlement Agreement, and to monitor and participate in state and federal regulatory oversight of the tariffs of all common carrier oil and gas pipelines operating in the State. The State's participation in tariff regulation included filing a discrimination challenge to the TAPS 2005-2006 interstate tariffs, which was heard by the Federal

Energy Regulatory Commission (FERC). The FERC decision in that matter is likely to be appealed. The State is also examining the 2009 proposed tariffs, continuing its renegotiation efforts on the TAPS Interstate and Intrastate Settlement Agreements that expire in 2011, and protesting expenditures by the TAPS carriers on the Strategic Reconfiguration Project.

The Department worked with the Governor's office and the Departments of Natural Resources and Revenue in developing complex legislation to induce construction of a natural gas pipeline from the North Slope to markets (AGIA) and assisted the Department of Revenue in analyzing and drafting further legislation related to fundamental changes to the state's oil and gas production tax regime (ACES). This legislation is also discussed below in the section captioned 2007 Regular Legislative Session Highlights



## PROTECTING ALASKA'S FINANCES ~continued~

and 2007 Special Session Highlights.

The Department assisted the Department of Natural Resources in the administrative proceedings on appeal from the Director's Point Thomson Unit default decision and in the DNR Commissioner's resulting decision to terminate the unit. DOL represented DNR in the seven appeals to the superior court from the unit termination decisions and in a lawsuit Exxon filed against the State for damages based on the termination. The dismissal of the damage suit is on appeal to the Supreme Court and the superior court issued a decision in December on the seven appeals, finding for DNR on nearly every major point but remanding the case to DNR for additional consideration of the appropriate remedy.

Another major case which is at the informal conference stage is an appeal of the Department of Revenue's decision to aggregate properties within the Prudhoe Bay Unit to determine the Economic Limit Factor (ELF). The ELF appeal stems from a January 2005 decision by the Department of Revenue to aggregate six satellite producing areas within the Prudhoe Bay producing areas to calculate the ELF. The effect of this decision was to significantly increase North Slope production taxes.

The Department represented the State in proceedings before the FERC and Regulatory Commission of Alaska (RCA) on issues related to the methodology for determining quality bank adjustments, and it negotiated a \$379 million settlement of outstanding corporate income tax liabilities with BP Exploration (Alaska).

### Securities Fraud Recoveries and Mercer Suit

During 2006 and 2007, the Labor and State Affairs section represented the State in a number of securities fraud cases, and the State collected approximately \$64 million in settlements. Two of those cases are outlined below. The State has also filed a damages claim against the former actuary for the PERS and TRS pension plans, Mercer (US), Inc.

#### Qwest

An example of a successful securities fraud settlement was a \$19 million settle-

ment in a securities fraud claim on behalf of the Alaska State Department of Revenue (DOR), Alaska Retirement Management Board (ARMB), and the Alaska Permanent Fund Corporation (APFC) against Qwest Communications International. A class action securities fraud lawsuit was filed against Qwest in 2001 and settled in 2006. Alaska's anticipated recovery from the proposed class action settlement was \$427,000. Instead of accepting the settlement, the Alaska Funds opted out of the class action and through this opt-out, the State was able to sizably increase the recovery of the Alaska Funds to \$19 million. The \$19 million is net of fees and costs and is allocated \$13 million to the APFC and \$6 million to the DOR/ARMB.

#### AOL Time Warner

Although it was resolved in late 2006, the State is including information here of a \$50 million settlement in a securities fraud action brought by the Alaska State Department of Revenue, Alaska State Pension Investment Board and Alaska Permanent Fund Corporation against defendants America Online, Inc. ("AOL"), Time Warner Inc. (formerly known as AOL Time Warner ("AOLTW")) and Historic TW Inc. The lawsuit, filed in 2004, alleged that defendants misrepresented advertising revenues and growth of AOL and AOLTW along with the number of AOL subscribers, all of which was intended to, and did, artificially inflate the stock price of AOL and AOLTW to the detriment of Alaska state funds. The Alaska funds that invested in AOL, AOLTW, and Historic TW stock include the Alaska Permanent Fund and state pension funds.

#### Mercer Suit

The State has filed a complaint against the former actuary for the PERS and TRS pension plans, Mercer (US), Inc. The complaint seeks more than \$1.8 billion in damages from Mercer for mistakes in calculating the plans' expected liabilities, including mistaken actuarial assumptions and methods about future healthcare costs, and basic mathematical and technical errors. This is an important matter not only for the State of Alaska, but also for the 161 other municipal employers who participate in PERS and the 58 em-

ployers who participate in TRS, all or whom were impacted by Mercer's errors.

### Collection of Debts Owed to the State

The Collections unit of the Collections and Support section collects unsecured debts owed to the State. These collections included criminal fines, cost of appointed counsel, cost of imprisonment, civil judgments owed to the State including attorney fee awards and civil penalties levied by agencies such as the Alaska Public Offices Commission, and victim restitution. It collected over \$5.8 million in FY 2007, an increase of over \$1 million from FY2006. The unit paid out over \$2.2 million in victim restitution.

The Child Support unit represents the Child Support Services Division (CSSD). The section resolved and closed over 1500 child support files in FY 2007, resulting in Alaska's children obtaining the support to which they were legally entitled. The section completed more than 700 modifications of Alaska child support orders through court proceedings, assuring that these support orders comply with the child support guidelines set forth in Alaska Civil Rule 90.3.

In March 2007, the federal Office of Child Support approved the Tlingit and Haida Indian Tribes' application to operate a IV-D child support agency. Due to the unique legal landscape in Alaska concerning native law and tribal jurisdiction, the Child Support unit has been and will continue to be providing additional assistance to CSSD to address legal issues related to tribal child support agencies.

### Defense of Torts and Workers' Compensation Cases

The Torts and Workers' Compensation section provides legal defense and advice in personal injury lawsuits filed against state agencies and state employees. It also provides advice and training to state agencies and represents the State as employer before the Workers' Compensation Board. Through December, 2007 the section had three jury trials, two in Anchorage and one in Kenai. In all three, the verdict was in favor of the State. The State also prevailed in multiple dispositive motions.

## PROTECTING ALASKA'S CONSUMERS

### Introduction

In 2007, the consumer protection unit of the Commercial and Fair Business Section was hard at work on a number of significant cases and educational opportunities. What follows is a list of some of the more noteworthy cases the consumer protection unit addressed combined with a list of several educational goals the unit accomplished this year.

### Consumer Protection Education and Outreach

Beginning in January 2007, the Consumer Protection attorneys have participated in a statewide education program with AARP, (and funded in part by the Division of Banking and Securities), entitled Investor and Consumer Protection Education for Alaskans. The program involved a two-day workshop presenting various classes on financial investments and consumer protection issues. The financial investment classes focused on financial markets, how to make a financial/investment plan, investment fraud, basics for investing, and planning for a secure retirement. The consumer protection classes focused on identity theft, protecting your credit, top frauds and scams, payday lending issues, and Medicare and Medicaid fraud. Since January 2007, workshops have been held in Anchorage, Sitka, Ketchikan, Fairbanks, Juneau, Kenai/Soldotna, Palmer/Wasilla, Barrow, Bethel, Kodiak and Dillingham.

The Consumer Protection Unit and Alaska Legal Services Corporation teamed up to present a pro bono clinic for Mat-Su residents on July 11. The clinic, "Consumer Protection Fundamentals", covered common scams, identity theft, and motor vehicle issues.

### Court Approves Lithia Settlement

In a heavily contested battle over a consumer protection settlement with Lithia, Judge Jack Smith signed a consent judgment between the State and all Alaska Lithia auto dealers that will provide significant consumer restitution, injunctive relief, and civil penalties. The judge approved the consent judgment and Lithia paid the State \$500,000 in penalties. The class action plaintiffs have appealed the

court's decision regarding intervention to the Alaska Supreme Court where the matter is now in the briefing stage.

### Stanley Motors Agrees to Fine, AVC

Stanley Motors, which operates as Budget Car Sales, agreed to a suspended \$15,000 penalty for violations of Alaska's Motor Vehicle Dealer Act. Stanley ran advertisements for an "Invoice Sale" claiming it was selling vehicles at or below factory invoice prices. Alaska law prohibits auto dealers from using the term "invoice" in advertisements because it is deceptive. Dealers rarely pay a manufacturer the actual invoice price for a vehicle because they receive incentives and bonuses. The penalty in this case was suspended for two years on condition that Stanley complies with this and other advertising restrictions.

### Alaska Joins Multistate ChoicePoint Settlement

The State entered into a multi-state settlement with ChoicePoint, Inc. to resolve allegations that the company failed to adequately maintain the privacy and security of consumer's personally identifiable information that was in its control. ChoicePoint provides identification and credential verification services to businesses, government and non-profit organizations. The company collects, maintains, and distributes consumers' personally identifiable information. In February 2005, ChoicePoint announced that criminals posing as legitimate businesses gained access to consumers' personally identifiable information, which was later used by the thieves to commit identity theft. Under the settlement, ChoicePoint will make significant, ongoing changes in the way that the company credentials new customers who have access to personally identifiable information, and will provide greater protection for publicly available information, including Social Security numbers.

### Favorable Alaska Supreme Court Decision in Gaming Case

The Alaska Supreme Court recently affirmed the dismissal of a suit brought in Anchorage superior court by Peter Roberts, an Anchorage bicycle shop owner

that alleged the Department of Revenue had injured him by allowing a non-profit corporation to use pull-tab proceeds to fund a free to the public bicycle program that competed with his business. Mr. Roberts is the sole shareholder of a corporation that actually owns the bicycle shop. Previously he had brought the same suit in the name of the corporation but it was dismissed because of a state law that requires corporations to appear in court by licensed counsel. In the suit that was the subject of the Supreme Court appeal, Mr. Roberts tried to get around the attorney requirement by having the corporation assign its right to him.

The Supreme Court rejected the assignment of rights as an invalid attempt to circumvent a valid statutory requirement. The court also affirmed that the issuance of a gaming permit did not violate an Alaska statute that mandates that charitable gaming proceeds be only used for charitable purposes. Finally, the court found that Mr. Roberts is not a public interest litigant, which makes him liable to pay the \$5,225 in attorney's fees awarded the State by the superior court.

### AOL Settlement

The State entered into a multi-state settlement with AOL, one of the nation's largest Internet service providers. The settlement resolves complaints in which consumers alleged difficulty and confusion in attempting to cancel their AOL paid services. The settlement requires the company to make significant changes in honoring consumer cancellation requests, addresses a number of billing practices that created the consumer confusion, requires the payment of refunds to consumers who filed complaints, and makes a payment to the State for its attorneys fees in the amount of \$45,000.

### State Receives Partial Settlement Of Antitrust Case

The State recovered \$95,000 in penalties and attorney's fees in a multi-state antitrust case it filed in 2006. The case was filed in the District of Columbia against Warner Chilcott and Barr Pharmaceuticals. Warner is the maker of Ovcon, an oral contraceptive. The suit alleged that Warner and Barr entered into a market allocation and price fixing agreement to

## PROTECTING ALASKA'S CONSUMERS ~continued~

prevent the sale of a generic version of Ovcon. The states reached a settlement with Warner, but the case continues against Barr.

### Protecting Utilities Users

#### Stipulated Settlements Approved

**RCA Docket U-06-6, ML&P Depreciation Study.** The Regulatory Commission of Alaska (RCA) accepted a stipulation filed by (Anchorage) Municipal Light & Power (ML&P) and the Regulatory Affairs and Public Advocacy Unit of the Attorney General's office (AG/RAPA) which resolved disputed issues related to the depreciation study filed by the utility based upon its electric plant balances. The effect of the approved stipulation *reduces* ML&P's total depreciation expense by over \$2 million for the purposes of its next rate case in 2008.

**RCA Docket U-06-46, Enstar Service Line Extension.** The RCA accepted a stipulation filed by Enstar Natural Gas Co. and the AG/RAPA which resolved contested implementation issues arising from the RCA's prior approval of an Enstar increase in line extension fees and related rules (TA140-4). RAPA filed testimony in preparation for hearing that specified a particular cut-off date for application of the *old* tariff fee for utility installation of a meter and/or service line. The stipulation provides for certain customers to receive service connections at the old rates, and provides for the issuance of refunds to certain customers.

**RCA Docket U-06-76/U-06-77, GHU/CUC Water and Wastewater.** Golden Heart Utilities and College Utilities Corp. are investor-owned utilities who provide water and wastewater service in the Fairbanks service area. In the instant case, the utilities proposed rate increases, based upon a 2005 test year, additional to those already proposed in Dockets U-05-43/U-05-44 which is on appeal from the RCA in the Superior Court in 4FA-07-1360 CIV.

A stipulation resolving the utilities' revenue requirement which is used to set rates was filed and accepted by the RCA on July 23, 2007. The

agreed rates are, however, subject to change (reduction) depending on the outcome of a pending appeal from the orders issued in RCA Dockets U-05-43/44, discussed below.

On June 15, 2007, GHU/CUC filed another rate case (Dockets U-07-76/U-07-77) based on a 2006 test year. GHU/CUC seeks an additional 23.3% rate increase for the water utilities and a 6.9% increase for the wastewater utilities and proposes 5% per year increases for all its utilities for three years. A hearing is scheduled for March 2008.

#### RAPA Advocacy Yields Ratepayer Refunds

**RCA Docket U-05-43/U-05-44, GHU/CUC Rate Case.** Golden Heart Utilities and College Utilities Corp. filed a rate case seeking double-digit rate increases for water and sewer services. AG/RAPA testimony addressed a number of disputed issues including operating expenses, the proposal to use a year-end rate base, and the utility's appropriate rate of return. The RCA's January 8, 2007 decision (issued subsequent to an adjudicatory hearing) adopted numerous RAPA advocacy positions which resulted in the commission ordering refunds to ratepayers of the excess funds collected by the utility from August 1, 2005, to July 31, 2006.

On March 22, 2007, the utility appealed the RCA's decisions in Dockets U-05-43/U-05-44 to the superior court in Fairbanks contending that the RCA erred on 18 points regarding RCA disallowance of various rate case expenses, rate of return, and other adjustments. The utility also seeks a stay of its refund obligation until its appeal is decided. The AG/RAPA filed a cross-appeal on issues regarding synchronization to year-end rate base and elimination of rate base reduction for unallocated contributions in aid of construction (CIAC).

#### LNG Export License Extension

**FE No. 07-02-LNG, Kenai export license extension.** ConocoPhillips Alaska and Marathon Oil Company applied to the federal Department of Energy (DOE) for a blanket authorization to continue to export Liquefied Natural Gas (LNG) from the Cook Inlet for a two year period be-

ginning in April 2009. The State intervened in the proceedings, announcing its support for the two year extension of the export application subject to three conditions: ensuring local utility needs are met, taking steps to provide for replacement of reserves exported, and allowing for open access to unused capacity of the LNG plant by other Cook Inlet producers. The Department, working with all parties, reached an agreement which resolves the matter in a way that protects both the consumer and commercial interests.

As part of the agreement, the applicants each agreed to continue negotiations with ENSTAR Natural Gas Company and Chugach Electric Association, Inc. on gas supply agreements to satisfy local gas supply needs; and if certain local gas supply milestones are not met, the companies agreed to reduce exports below the LNG export quantities requested in the application. The applicants agreed to approve 2008 drilling plans for more wells. They also agreed to make data available to other potential oil and gas explorers to encourage exploration and development, and to purchase natural gas produced by other natural gas producers when practical for the production of LNG at the Kenai LNG Facility. Finally, the agreement includes a framework for cooperation between the State and the applicants on future applications to the DOE for additional LNG export authorizations.

#### Appellate Decision Upholds Ratepayer Refund

**3AN-05-11721CI (RCA Docket U-04-22/U-04-23), AWWU.** On June 25 the Anchorage Superior Court upheld an RCA decision that Anchorage Water and Wastewater Utility (AWWU) cannot increase its rates to offset payments in lieu of property taxes on contributed utility property that the utility is required to pay the Municipality of Anchorage. The AG/RAPA successfully argued before the RCA and the court on appeal that the municipal assessment (also known as Municipal Utilities Service Assessment or MUSA) cannot be included in consumer rates. As a result, AWWU remains subject to an estimated \$17 million refund obligation of already-implemented rate



## PROTECTING ALASKA'S CONSUMERS ~continued~

increases, unless it successfully appeals to the Alaska Supreme Court.

**RCA Docket U-06-134, Chugach** Chugach Electric Association (Chugach) filed a comprehensive rate case in which it sought an overall rate increase of \$2.8 million, but also sought to alter its rate structure by reducing its retail customer rates and simultaneously increasing the rates of

its wholesale customers, Homer Electric Association (HEA), City of Seward (Seward), and Matanuska Electric Association (MEA).

After discovery and the pre-filing of direct testimony by all parties, all parties except MEA entered into a settlement agreement which incorporated numerous attorney general positions. RAPA's expert analysis also concurred

that the stipulated reassignment of interest expense from retail to wholesale customers was reasonable and supportable on the record developed. The RCA approved the settlement on August 2 as a result of which Chugach retail customer rates will be reduced by approximately 5%. MEA, the only non-stipulating party, is scheduled to proceed to hearing to advance its case.

## PROTECTING ALASKA'S PUBLIC PROCESS

### Voting Rights, Education, Voter Initiatives, and the Public Process

The Department represented the State in challenges to state election and ballot practices based on the federal Voting Rights and Help America Vote Acts. The claims were that the State was providing inadequate assistance to voters who are Native language speakers and that voting machines should be programmed to provide ballot choices in Native Alaska languages and dialects. The Alaska Supreme Court determined some issues in the State's favor, but the litigation is ongoing.

The Department has been representing the State in two education cases with potentially significant budget impacts. The first case, still pending in 2007, involves a claim that the State discriminated against rural school districts in the manner used to fund school facilities. This case also involves claims that the State breached fiduciary obligations when it changed the public school trust from a land-

based trust to a money-based trust. The second education case is a challenge under the Alaska Constitution that public education is inadequately funded. It seeks significant additional funds for education. The Alaska Supreme Court determined most issues in the State's favor in 2007, but the superior court retained jurisdiction over the issue of the sufficiency of state oversight of the school districts.

A number of voter initiative petitions were filed in anticipation of the election in 2008, including an initiative to put the question of Alaska's secession from the United States before the voters, an initiative to require a super-majority vote for the legislature to pass tax-related bills, three clean water initiatives and a public-funding-for-state-elections initiative. Multiple lawsuits addressing whether these and other initiatives should be certified are pending or were decided this year, and many of the issues required assistance to the Division of Elections.

The Department provided ongoing legal assistance associated with institutional relationships within state gov-

ernment, including the separation of powers between the three branches of government and the interaction between state and local governments. It assisted in the drafting of executive branch ethics legislation and once the legislation was passed, it provided training on its content to all state agencies.

The Department briefed and argued the Dental Health Aide litigation, where the American Dental Association and the Alaska Dental Society, along with several individual dentists, sued the State and the Alaska Native Tribal Health Consortium to enjoin federally-certified dental health aide technicians who were providing dental care to Alaska Natives in rural villages from providing that care. The dentists also sued to compel the State to enforce the state dental practices licensing act against the technicians on the theory that they are practicing dentistry without licenses. The case was ultimately resolved in favor of the federally-certified dental health aide technicians and the State.

## PROTECTING ALASKA'S INFRASTRUCTURE

The Transportation Section of the Department advises the Alaska Department of Transportation and Public Facilities.

### Knik Arm Bridge and Toll Authority

The Department has been providing legal assistance to the Knik Arm Bridge and Toll Authority, which has

conducted a significant environmental review of the proposed bridge over Knik Arm and is awaiting federal approval of that review. The Authority also started a procurement process for a private developer to design, construct and operate a toll bridge over Knik Arm for fifty or more years.

### Anchorage and Fairbanks In-

### ternational Airports Operating Agreement

The Department has been assisting in negotiating a new 5-year operating agreement between the international airport system and the passenger and freight air carriers that use and finance the Anchorage and Fairbanks airports. The new agreement will determine funding for the operation and capital improvements of the airports for the next five years.



## PROTECTING ALASKA'S ENVIRONMENT

### Introduction

The Environmental section provides legal representation to state agencies for the investigation, defense, and prosecution of claims regarding contaminated sites around the State and also provides legal advice on environmental matters. The section also provides legal representation to state agencies for the prosecution of claims regarding the Exxon Valdez oil spill, the reimbursement of oil spill-related costs, and the expenditure of restoration funds obtained from settlement of the Exxon Valdez oil spill litigation.

### Cruise Ship Program Revisions

In 2007, DEC and Law continued to work diligently in developing significant revisions to DEC's cruise ship program in order to implement new requirements relating to Ocean Rangers and cruise ship wastewater discharges established under Ballot Measure 2 (the Cruise Ship Initiative), which voters approved in August of 2006. The Ocean Ranger program will involve deployment of rangers to conduct on-board monitoring of large cruise ship operations, including air emissions and wastewater discharges. DEC is in the process of finalizing a general permit for large cruise ship wastewater discharges. Regulations necessary to implement the ballot initiative are also being developed.

For more information on the cruise ship program, please visit:

[http://www.dec.state.ak.us/water/cruise\\_ships/index.htm](http://www.dec.state.ak.us/water/cruise_ships/index.htm)

### Water and Wetlands Permitting Issues

Given that there are more than 174 million acres of wetlands found within Alaska, the exercise of federal jurisdiction over waters and wetlands in Alaska is of keen interest to the State of Alaska. Law, DEC and DNR continue to review new or evolving policies and guidance (including June 2007 joint guidance) generated by EPA and the U.S. Army Corps of Engineers to assess the potential impact they will have for projects and activities within the Alaska.

### Kensington Appeal

This case involves an appeal of the Army

Corps of Engineers' permit allowing for disposal of mine tailings at the Kensington Mine outside Juneau. The Ninth Circuit ruled that the COE permit was invalid because such tailings require a different federal permit, from EPA. Petitions for rehearing are pending in the Ninth Circuit.

### APDES Project

The State is finalizing its application to EPA to take over the program for permitting disposal of pollutants in surface waters. Alaska is one of five states not to have assumed that permit program from EPA. To get EPA approval of a state program, ADEC must demonstrate that it has the authority to run a program no less stringent than EPA's under the federal Clean Water Act. For more information on this project, see the website: <http://www.dec.state.ak.us/water/npdes/npdes.htm>

### Appeal of Red Dog Mine Discharge Permit

Certain residents of Kivalina, along with some environmental advocacy groups, have appealed the discharge permit EPA issued for the mine, as well as the state's certification that the permit also satisfies state law. The case is now before the state Office of Administrative Hearings, and a briefing schedule is being negotiated.

### Exxon Valdez Oil Spill

The 1991 agreement settling the state and federal governments' civil claims against Exxon as a result of the Exxon Valdez oil spill includes a provision which allows the governments to reopen the settlement and require Exxon to make additional payments totaling as much as \$100 million to fund specific restoration projects identified by the governments to address injuries that meet the Reopener criteria. On June 1, 2006, the Department and the U.S. Department of Justice announced that they have taken the first step in asserting a claim under the Reopener provision by providing ExxonMobil Corporation with a detailed project plan for the cleanup of lingering oil at an estimated cost of \$92 million. On August 31, 2006, the Department and the U.S. Department of Justice submitted a demand letter to ExxonMobil for \$92 million pursuant to the EVOS settlement Reopener

provision. The governments continue to pursue this matter.

In November 2007 the U.S. Supreme Court accepted a Petition for Certiorari filed by Exxon contesting the punitive damage award to private plaintiffs. The Department is preparing an amicus brief in support of the private plaintiffs and assisting other amici in their efforts.

For more information on the governments' settlement with Exxon and the Reopener provision, please visit the Exxon Valdez Oil Spill Trustee Council website at:

<http://www.evostc.state.ak.us/>

### Wrangell Institute Contaminated Site Cleanup

Petroleum and other hazardous contamination resulted from historic operations at this former Bureau of Indian Affairs school in Wrangell. The site is presently owned by the City of Wrangell. The State of Alaska, the United States, the City of Wrangell and Cook Inlet Region, Inc. have entered into a consent decree in order to complete cleanup and monitoring of surface and groundwater contamination at the site. Under the terms of the consent decree, the United States will pay \$2.35 million to the State of Alaska to reimburse the State's past and future cleanup costs at the site. The State has agreed to oversee the remedial action at the site utilizing default Method 2 cleanup levels. The City of Wrangell will conduct long-term water monitoring at the site. The Consent Decree was filed in U.S. District Court of the District of Alaska and is awaiting approval by the court.

The Alaska Department of Environmental Conservation maintains a website which provides information on the status of the cleanup at the Wrangell Institute Site:

[http://www.dec.state.ak.us/spar/csp/search/csites\\_report.asp?Hazard\\_ID=3137](http://www.dec.state.ak.us/spar/csp/search/csites_report.asp?Hazard_ID=3137)

### Seabulk Pride Tanker Grounding

The Department is assisting the Department of Environmental Conservation's investigation of the February 2, 2006 grounding of the oil tanker Seabulk Pride near the Nikiski Kenai Pipeline dock in

## PROTECTING ALASKA'S ENVIRONMENT *~continued~*

Cook Inlet. DEC administrative subpoenas were issued to Tesoro, the vessel's contingency plan holder, and Seabulk Tankers, Inc., the vessel owner. Both companies have provided documents in response to the subpoenas and the investigation is continuing.

DEC's website on the incident can be accessed at:

[http://www.dec.state.ak.us/spar/perp/response/sum\\_fy06/060202201/060202201\\_index.htm](http://www.dec.state.ak.us/spar/perp/response/sum_fy06/060202201/060202201_index.htm)

### Selendang Ayu Grounding and Oil Spill

On December 8, 2004, the 738-foot cargo vessel M/V Selendang Ayu, ran aground and broke in half off Unalaska Island in the Aleutian Islands. The cargo vessel, which was bound to Asia with a 60,000-ton soybean load, was carrying approximately 425,000 gallons of Intermediate Fuel Oil 380 and 21,000 gallons of marine diesel oil; an estimated 354,218 gallons of those oils were released into the environment. Six of the vessel's crew members were lost in the rescue effort. Representatives of natural resources trustee agencies, which for the State include the Departments of Law, Natural Resources, Environmental Conservation, and Fish and Game, have undertaken preassessment activities associated with the natural resource damage assessment

and restoration process. On March 30, 2007, the trustee agencies published a notice of intent to conduct restoration planning in the federal register.

The United States Fish & Wildlife Service is the federal lead administrative trustee agency and maintains a website at [http://alaska.fws.gov/fisheries/contaminants/spill/sa\\_index.htm](http://alaska.fws.gov/fisheries/contaminants/spill/sa_index.htm) with information on the natural resource damage assessment process.

The Department of Law is also pursuing on behalf of the Departments of Environmental Conservation, Natural Resources and others civil claims against the owner and operator of the M/V Selendang Ayu arising out of the grounding and oil spill. These claims involve oil spill penalties, wreck removal, trespass and other non-natural resource damages. Included in these civil claims is recovery of the State's costs responding to and overseeing the response to oil spill from the Selendang Ayu and the company's wreck removal efforts. The Alaska Department of Environmental Conservation maintains a website concerning the oil spill response and wreck removal at:

[http://www.dec.state.ak.us/spar/perp/response/sum\\_fy05/041207201/041207201\\_index.htm](http://www.dec.state.ak.us/spar/perp/response/sum_fy05/041207201/041207201_index.htm)

### 2006 BP Pipeline Spills and Shutdowns Investigation

DEC and the Environmental Conservation and Oil, Gas & Mining sections of the Department of Law are investigating the March 2006 Prudhoe Bay pipeline spill at Flow Station 2, as well as corrosion and integrity problems with BP operated pipelines discovered in 2006. For more information visit the websites:

[http://www.dec.state.ak.us/spar/perp/response/sum\\_fy06/060302301/060302301\\_index.htm](http://www.dec.state.ak.us/spar/perp/response/sum_fy06/060302301/060302301_index.htm) and <http://www.law.state.ak.us/departement/civil/bp-pb-closure.html>

### Long Island Pesticide Permit

On March 1, 2006 DEC issued a permit to aerially apply pesticides to land located on Long Island in Southeast Alaska. The permit authorizes the owner of the land, Long Island Trust, to practice forestry vegetation management on approximately 1,950 acres by spraying two pesticides, Accord and Arsenal (both registered for use by the EPA under FIFRA and by the State of Alaska) and two adjuvants, Competitor and In Place. Following the issuance of the permit, SEACC, representing itself and other parties, filed a request for adjudicatory hearing and stay. On May 18, 2006 the Commissioner of DEC denied SEACC's request for adjudicatory hearing and stay of permit. SEACC filed an administrative appeal with the Superior Court. SEACC submitted five issues for review by the Court. After briefing and oral argument, the Court remanded the permit to DEC for further findings on three of the five issues.

### Adak Island Cleanup

Cleanup of Adak Island, a former Naval base, is currently ongoing. The Island is contaminated with both petroleum and munitions, including unexploded ordnance. Petroleum contaminated areas of the Island are currently being remediated by the Navy. Currently, the Department of Law, DEC and the Navy are working through issues related to remediation of munitions, including issues such as institutional controls for the safety of residents and visitors to the Island.



On December 8, 2004, the 738-foot cargo vessel M/V Selendang Ayu, ran aground and broke in half off Unalaska Island in the Aleutian Islands.

## PROTECTING ALASKA'S NATURAL RESOURCES AND STATE'S RIGHTS

### Title to Coldfoot Rights-of-Way Secured

A settlement was reached in the Coldfoot RS 2477 case and filed with the U.S. District Court on January 8, 2007. Judge Beistline signed the consent decree and final judgment on January 9, 2007 quieting title in the State to a permanent 60 foot right-of-way across federal and Doyon-selected lands. The right-of-way goes east from Coldfoot on a common route to state land and then splits with one trail (denoted RST 9 in DNR's RS 2477 inventory) continuing to Chandalar Lake, and the other (RST 262) going to Caro. The State sued the United States, Doyon, and numerous individuals and companies in 2005 to quiet title to the trails.

These trails were established in the early part of the 20<sup>th</sup> century to provide access for miners, and are still used today. Under the settlement, the right-of-way will be treated as if it were a right-of-way established pursuant to RS 2477 for purposes of determining the scope of property rights, permissible uses and extent of any federal regulatory authority. RS 2477 refers to a section of the 1866 federal mining law by which the government granted rights-of-way across federal lands not otherwise reserved for public use, to encourage miners and settlers to expand into the western states and Alaska. Although RS 2477 was repealed in 1976, existing rights-of-way created under it are preserved under federal law.

### Tongass Settlement

Defendant United States Forest Service, Intervenor Alaska Forest Association, the State of Alaska, and a number of environmental organization plaintiffs reached a universal settlement agreement that resolves four cases pending in federal courts. These cases challenged various timber sales in the Tongass National Forest, all of which were based on the existing Tongass Land Management Plan (TLMP). The current TLMP was invalidated by the Ninth Circuit Court of Appeals in 2005. A draft revised TLMP has been published with an expected effective date for a final plan in the fall of 2007.

The settlement agreement allows identi-

fied timber sales to proceed without further legal challenge. These sales are expected to provide enough timber for existing Southeast Alaska timber mills to continue operations until such time as new sales under the final revised TLMP are possible.

In exchange for allowing certain sales to go forward, other sale areas were withdrawn and may not be offered until the revised TLMP is in effect. The Forest Service also agreed not to issue new records of decision in roadless areas of the Tongass prior to the effective date of final revised TLMP. In addition, the parties agreed to a trial of a new collaborative process regarding several specific sales in an attempt to avoid future litigation.

### FRWR Litigation

On May 17, 2007, the court issued an order on phase I of the consolidated Katie John v. U.S./State v. Norton federal reserved water rights (FRWR) case. The Department is challenging both the process the federal government used to assert FRWR (regulation rather than adjudication) and the geographic extent of the rights it claims. The State's claims include assertions that the federal government is impermissibly seeking to over-extend its subsistence jurisdiction, in violation of the State's sovereign rights, by extending its FRWR claims into marine and tidal waters, rivers and lakes adjacent to but outside of federal boundaries, and inland waters surrounded by state, private, or selected lands. The court's order found that FRWR may be asserted by federal regulation. However, the court agreed with the State that the federal government may not conclusively determine FRWR by regulation. The court found that the federal regulations do nothing more than "list federal reservations in which the federal government claims to have by implication reserved water for purposes of ANILCA." Phase II of the litigation will address whether the government has been over-expansive in its determinations of FRWR or under-expansive as other parties claim. Briefing will be complete in January 2008.

### Division of Agriculture and the Board of Agriculture and Conservation

The Department provided day-to-day advice to DNR, the Division of Agriculture and the Board of Agriculture and Conservation as it considered the future of the State owned dairy, Matanuska Maid.

### Situk River Access

On June 26, 2007 final signatures were secured on an agreement under which ADF&G and DNR purchased the road to, and boat launch on, the lower Situk River, near Yakutat, in order to guarantee continued public access. The road and boat launch were within the boundaries of the Setuck Harry native allotment, but were surveyed out for the sale. In the agreement, the allotment heirs also agreed to release the State from all potential claims arising directly or indirectly from past public use of the road and boat launch. Closing occurred later in the summer.

### Sherman C. "Red" Smith v. State

The State received a final judgment of dismissal from the Kenai Superior Court in this case. The plaintiff sued two former governors, a former AG, a former commissioner, and an AAG, as well as several state offices and the judicial branch, over issues arising out of his failure to receive title to a couple of parcels of land from the federal and state governments in the 1980's. He also claimed that state officials had failed to apply and enforce section 16 of Article VIII of the Alaska Constitution (no involuntary divestment of right to use waters, interests in land, except for public use with compensation), especially against the federal government. The court found the complaint failed to state a claim against the particular individual defendants and that claims against the state agencies either failed to state a claim or were time-barred by the applicable statutes of limitations.

### Lynn Canal Conservation v. DNR

On July 3, 2007 Judge Patricia Collins issued a decision in favor of the Department of Natural Resources, affirming the agency's decision regarding the operation of commercial jet boat tours in the Chilkat Bald Eagle Preserve near Haines. Appellants Lynn Canal Conservation, Southeast Alaska Conservation Council, Jun-eau Audubon Society and Joe Hotch argued that DNR had failed in its statutory duty to protect the preserve in perpetuity



## PROTECTING ALASKA'S NATURAL RESOURCES AND STATE'S RIGHTS *~continued~*

when it issued a permit for jet boat operations. Appellants claimed jet boats could damage sensitive salmon habitat in the Chilkat River. However, Judge Collins ruled DNR relied upon substantial evidence in reaching its decision that under the conditions of the permit jet boat tours will not result in long-term negative impacts on salmon spawning or other protected goals for the preserve.

Prior to receiving a decision in this case, appellants, represented by Earthjustice, requested and obtained a stay of decision until the Alaska Supreme Court ruled upon whether its decision in *State of Alaska v. Native Village of Nunapitchuk* was to be applied prospectively only. As a result of the decision in *Nunapitchuk*, public litigants may be subject to attorneys' fees in cases where the State prevails. The State requested fees in this case and was awarded \$1000.

### U.S. v. Harlan Mahle

On July 5, 2007, the State received a favorable decision from the Interior Board of Land Appeals in *U.S. v. Harlan Mahle*, 171 IBLA 330 (June 30, 2007), an appeal from a government contest hearing for a Native allotment claim near Skagway. In a 66-page decision, the IBLA affirmed the Administrative Law Judge in all respects.

Specifically, the board found that (1) the allotment applicant had not demonstrated qualifying use and occupancy of the claim; (2) the State's selection of a portion of the claim (later conveyed to the City of Skagway) pre-dated filing of the allotment application, thus that portion was not excluded from the State's Tentative Approval by the allotment serial number and could not be legislatively approved under Sec. 905 of ANILCA; (3) the allotment heirs' attempt to reconfigure a portion of the allotment claim constituted an untimely amendment to the allotment land description under Sec. 905 of ANILCA; and (4) it was proper to employ a government contest hearing notwithstanding that the allotment claim in part described lands conveyed out of U.S. ownership (to the State), a fact that otherwise would require adjudication through the Stipulated Procedures under *Aguilar v. United States*, 474 F. Supp. 840 (D.

Alaska 1979).

### State v. Manning

On July 6, 2007, the Alaska Supreme Court issued its long-awaited opinion in this case in which several of the Board of Game's criteria for scoring Tier II hunting permit applications were alleged to be unconstitutional and in which the parties had put the ongoing validity of the McDowell case at issue. The decision addressed none of the larger issues, and the Court simply affirmed the trial court. Thus, the Court found that two of the board's criteria, cost of food and cost of gasoline, were constitutional and one, availability of alternate sources of game, was not.

### Tier II

On July 20, 2007, Judge Jack Smith issued an injunction in a case brought by the Ahtna Tene Nene' Subsistence Committee and others invalidating all current permits for Nelchina caribou and Unit 13 moose Tier II hunts, mandating that existing applications be rescored, and prohibiting implementation of parts of two new regulations the Board of Game had recently adopted when that rescoring is done. He ordered that, while the board may use income as a criterion to measure the availability of food, it may not allow income to drive an applicant's entire score to zero, despite the board's conclusion income is the most important measure of one's ability to obtain food. The judge also ordered that the board may not prohibit Tier II permittees from hunting the subject species in other areas of the state, despite the statutory requirement that Tier II permits go only to those who are dependent on the population in question as a mainstay of their livelihood.

### CFEC Appeals

The Department has successfully defended numerous appeals of decisions of the Commercial Fisheries Entry Commission in superior courts and the Alaska Supreme Court in 2007. A number of additional appeals remain pending.

### Predator Control Lawsuits

The predator control lawsuits are ongoing. At the State's request, the suit brought by the Defenders of Wildlife, Alaska Wildlife Alliance, and Sierra Club and the second one brought by the Friends of Animals, have been consolidated. A private attorney moved to intervene as a party and that motion was granted following the State's non-opposition. Oral argument on motions for summary judgment on some issues were held in September.

### University Land Bill Litigation

Earthjustice, representing the Southeast Alaska Conservation Council and Tongass Conservation Society, filed suit in Juneau Superior Court against the State and the University of Alaska. The suit alleges that legislation granting certain state lands to the University and requiring that net income generated from the land be held in a separate endowment trust violates Article IX, section 7 of the Alaska Constitution by creating a dedicated fund. Briefing on cross motions for summary judgment is complete.

### Kenai River Federal Customary and Traditional Use Determination For Resident Species Repealed

On September 13, 2007, the Federal Subsistence Board acted on a request for reconsideration filed by the State in June, and repealed the Board's previous customary and traditional (C&T) determination for Ninilchik to resident fish in the Kenai River drainage. However, the Board retained the C&T determination for Ninilchik to salmon in the Kenai River area, including the Russian River. The Board declined to respond further to our other pending requests for reconsideration regarding existing C&T determinations for Hope and Cooper Landing, treating them as final determinations.



## INCREASING EFFICIENCY WITHIN THE DEPARTMENT

The Department's Administrative Services division provides financial management and forecasting, budgeting, accounting, procurement, timekeeping management, computing and mail services. The Department has embarked on a new technology project (ProLaw) that will

replace the existing timekeeping and billing system and provide case management tools that have previously been lacking or inconsistently managed. This project, which started this year, will continue to be implemented over the next two years. This year the Department migrated

its email delivery system to Microsoft Outlook with a minimum of disruption. Together these changes will increase the efficiency and effectiveness of the Department.

### Department of Law Financial Highlights

	FY2006 Actual	FY2007 Actual	FY2008 Budget
<b>Personnel Services</b>	<b>\$43,268.6</b>	<b>\$47,017.8</b>	<b>\$49,453.8</b>
<b>Travel</b>	<b>1,593.2</b>	<b>1,771.3</b>	<b>1,254.3</b>
<b>Services</b>	<b>31,297.5</b>	<b>20,551.0</b>	<b>14,182.3</b>
<b>Commodities</b>	<b>1,713.8</b>	<b>1,436.5</b>	<b>1,030.7</b>
<b>Capital Outlay</b>	<b>174.4</b>	<b>191.9</b>	<b>313.0</b>
	<b>\$78,047.5</b>	<b>\$70,968.5</b>	<b>\$66,234.1</b>
<b>General Fund</b>	<b>\$55,719.7</b>	<b>\$41,976.0</b>	<b>\$39,257.4</b>
<b>Federal Receipts</b>	<b>1,147.4</b>	<b>1,866.9</b>	<b>3,113.9</b>
<b>Interagency Receipts</b>	<b>20,747.8</b>	<b>26,694.8</b>	<b>22,731.3</b>
<b>SDPR</b>	<b>304.9</b>	<b>430.8</b>	<b>1,131.5</b>
<b>Other</b>	<b>127.7</b>	<b>-</b>	<b>-</b>
	<b>\$78,047.5</b>	<b>\$70,968.5</b>	<b>\$66,234.1</b>
<b>Permanent Full Time</b>	<b>510</b>	<b>535</b>	<b>537</b>
<b>Permanent Part Time</b>	<b>5</b>	<b>11</b>	<b>9</b>

**NOTE:** FY2006 and FY2007 Actuals include expenditures of multi-year supplementals for Oil, Gas and Mining projects. FY2008 Budget does not include remaining authorizations on those prior year multi-year supplementals expected to be expended during FY2008.

## Civil Division Support Staff Picture Gallery

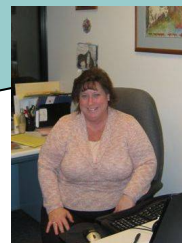


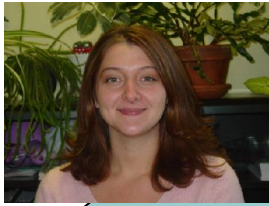
### Anchorage Civil Division Law Office Support Staff

Clockwise from top: Shelly McCormick (LOA), Shelby King (LOA), Penny Helgeson (Paralegal), Margaret Watson (LOA), Courtney Dowling, (LOA) Candace Seils (Receptionist), Karen Burns (Litigation Assistant), Leah Prince (LOA), Barbara Peterson and Beth Goodwin (LOAs), Joyce Villard (Paralegal), Kristina Oldfield (Library Supply Clerk), Kelly Gamble (Law Office Manager) and Melanie Ferguson (Legal Office Administrator), Leticia Alvarez and Keri Hile (LOAs) and Stefan Estonilo (LOA).



*Not pictured: Cathy Marvel-Hall, Linda Mae Vahey, Paula Wright, Kathey Virgin, Nicole Hillstrom, Patricia Runyan, Yvette Hardney, Shelia Olson, Nicole Leach, Natalie Lawrence, Terri Floyd, Tatsuya Otsuka, Tracy Gould, Patricia Anderson, Gretchen Knapp, Kimberly Halstead and Sherene Jensen (Paralegals), Sabina Figueroa, Marchelle Cote, Michelle Zellweger, Leilani Tufaga, Kristi Duff, Robert Harris, Gail Byers, Tina Burgan, Laura Martinez, Shona Embs, Mary Hildreth, Tiffany Roberts, Corinne Rowland, Pamela McDowell, Karyl Richards, Sherrill Lopez, Angie White, Kimberley Prescott, Annie Ellis, Caryn Byus, Heather Hebdon, Angela Driggs, Ashlee Bonham, Heather Hebdon, Erika Moore and Samantha Christenson (LOAs), Mindy Johnson (Admin Assistant), Ann Smith, Cariel John-Baptiste, Denise Negus, Angela Ramos, Linda Mockta, Teresa Newton, Dennis Morgan and Cora Hart (Administrative Clerks), Tina Paige, Deanne Kilburn, Molly Benson, Kamie Willis, Jean Clarkin, Pam Post, Kay Rawlings, Lisa Turrini, Marge Feldman, Erika Moore, Doris Stevenson, Jill Stone and Constance Croak (Litigation Assistants).*





### Fairbanks Civil Division Law Office Support Staff



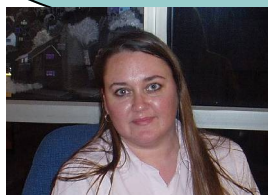
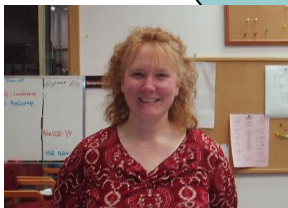
Clockwise from top: Bob Montgomery (Paralegal), Stacie Ryman (Paralegal), Nekinia Wright (Admin Clerk), Tiffanie Jaeke (LOA), Karen Windbigler (LOA), Larisa Blackburn (LOA), Jessica Harmon (LOA) and Audra Fountain (LOA).  
*Not pictured: Michele Foley (Law Office Manager), Vickie Gould (LOA), Mary Ann Fortune (LOA) and Karol Alderman (Paralegal).*



### Juneau Civil Division Law Office Support Staff



Clockwise from top: Joleen Langel (LOA), Becky Allison (LOA), Pat Van Pool (LOA), Anne-Marie Palumbo (Associate Attorney), Lydia Ver (LOA), Jennifer Ditcharo (Office Manager), Angie Hobbs (LOA), Lisa Long (LOA), Carolyn Doropan (Case Manager).  
*Not pictured: Raven Haffner, Alberta Everson, Jean Erickson, Patti Yeaple and Nik Church (LOAs), Kevin Messing, Terri Begley Allen, Kim Schafer and Linda Miller (Litigation Assistants), Vicki Houtary and Christy Blair (Paralegals) and Rick Willard (Admin Clerk).*



## PROSECUTING ALASKA'S CRIMINALS

### Introduction

In doing justice for the people of Alaska, the Criminal Division takes pride in its accomplishments in 2007. The Criminal Division is making a difference in the quality of life for many Alaskans. When law enforcement takes a violent offender off the streets and one of our offices obtains a fair resolution of the case, residents feel safer. Alaskans trust our district attorney offices to work with law enforcement and community based organizations to ensure their protection. We will uphold that trust. This is the Division's promise to the people of Alaska.

During 2007 Attorney General Colberg and Deputy Attorney General Svobodny visited the Barrow, Fairbanks, Kotzebue, Nome, Bethel, Kodiak, Anchorage, Kenai and Ketchikan District Attorney Offices. In addition to meeting the staff in these offices, the offices were reviewed and needs and concerns were addressed. Meetings were held with members of the criminal justice system including judges, local law enforcement, and victims groups in order to improve criminal justice services provided to the communities.

The Criminal Division provided the first ever Trial Advocacy Training in Alaska for 25 of our newest attorneys. The week-

long training was provided in Homer by distinguished trial attorneys from the National Advocacy Center. This was a practical, "hands-on" training course for prosecutors. Funding was provided for the training through a grant the Criminal Division requested and was awarded from the Department of Justice.

It is impossible to set out all the significant efforts undertaken by the State's 13 district attorney's offices and the Office of Special Prosecutions and Appeals to fulfill their mission of prosecuting criminal offenders. The following highlights are a small sampling of some of the cases undertaken over the past year.

### Homicide Cases

#### Barrow

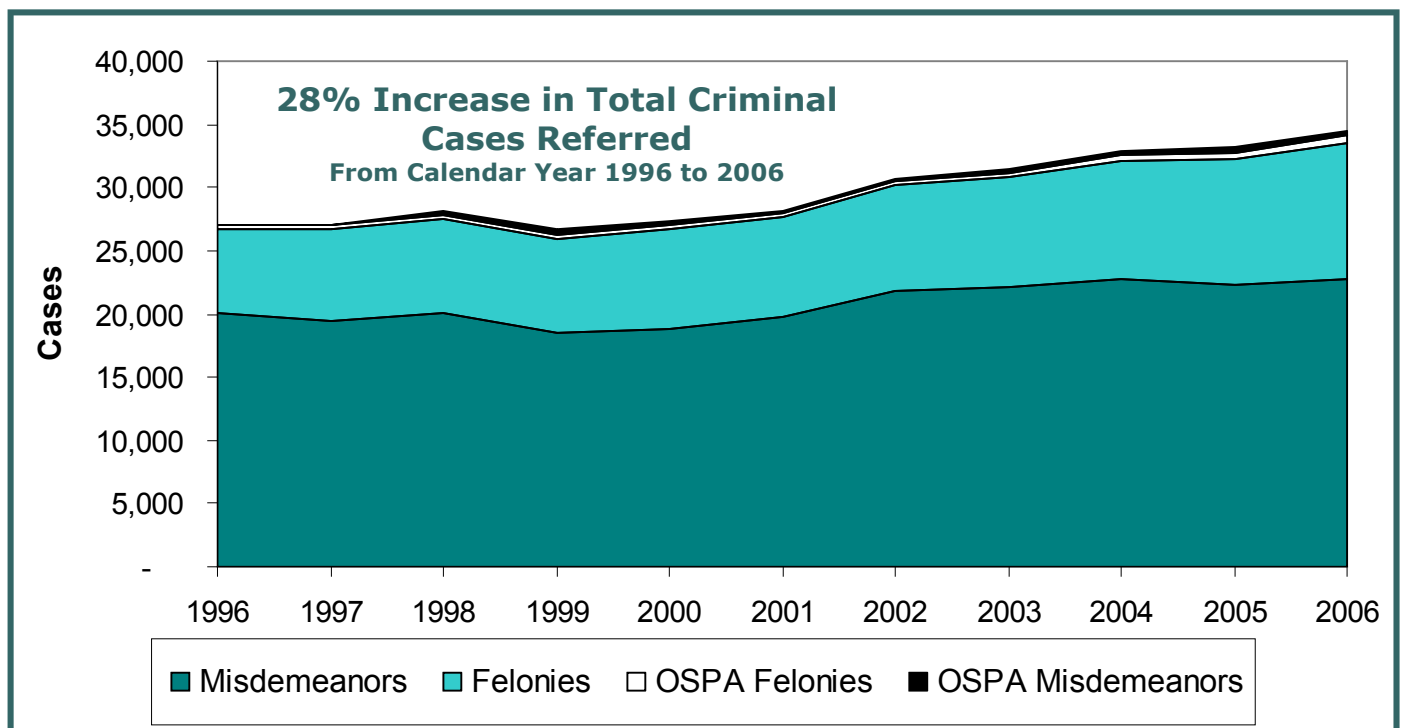
Kwang Lee was convicted of criminally negligent homicide in a complicated case where the defendant and most of the witnesses did not speak English. After sentencing Lee was deported back to South Korea. Assistance was provided to the Barrow office on this case by Assis-

tant Attorney General Dwayne McConnell of the Rural Prosecutions Unit.

#### Anchorage

Michael Lawson was convicted for the 2004 murder of a 19-year-old woman. Lawson acted as the property manager for the apartment building that the woman

moved into just days before her disappearance. Lawson alleged that it was an accident committed when she walked in on him breaking up cocaine. In an enormous and lengthy investigation, Assistant District Attorney Sharon Marshall worked tirelessly with police to eventually bring Lawson to justice. She was assisted by Victim Witness Paralegal Michal Clark.





## **Homicide Cases** ~continued~

In another Anchorage case Cynthia Lord was convicted of murdering her three sons, ages 16, 18, and 19. The well-planned murder occurred over a thirteen hour period, during which Lord killed each son individually and then hid the body so she would be able to kill all three. Lord was delusional from discontinuing her prescription medicine and believed that evil was taking over her children and would turn them into clones and/or robots. Lord was sentenced to 175 years in prison. This was another success for Assistant District Attorney Sharon Marshall and Victim Witness Paralegal Michal Clark.

### **Juneau**

Jason Coday was convicted and sentenced to serve 99 years for murder in the first degree. Within a day of arriving in Juneau, the defendant "purchased" a shotgun by taking the weapon and leaving money on the counter. He sawed off the shotgun and two days later shot a passer-by several times. The case was tried by District Attorney Doug Gardner assisted by Victim Witness Paralegal Carrie Hulse.

David Alex and Stephanie Smathers were convicted of criminally negligent homicide. The two were fighting while driving and hit and killed a woman. Both were under the influence of Oxycodone at the time of the accident. Alex and Smathers were each sentenced to three years in prison. The case was tried by District Attorney Doug Gardner assisted by Victim Witness Paralegal Carrie Hulse.

### **Palmer**

In three separate trials, defendants Tommie Patterson, Mario Page, and Kira Gray were convicted of murder. The three teenagers' motive for the killing was retribution for the theft of cocaine. The attorneys that handled these cases were then Assistant District Attorney Steve Wallace, Assistant District Attorney Jon-Marc Petersen, and District Attorney Roman Kalytiak, assisted by Victim Witness Paralegal Debbie Fischer.

Martha Harper was convicted and sentenced to serve nine years in prison on two charges of assault and driving under the influence. Harper drove drunk on the Parks and Glen Highways causing numerous motorists to take evasive action. Harper crossed the grass median and struck a driver head-on. This case was handled by District Attorney Roman Kalytiak assisted by Victim Witness Paralegal Sandy Chadwell.

### **Sitka**

Anthony Haube was convicted in March of second-degree murder in a 2005 death. He was sentenced to serve 85 years in prison. Haube was one of three men charged with first and second-degree murder after a man was found dead outside a Petersburg apartment building. The man had been beaten, thrown from a second-story window and stabbed repeatedly.

Another co-defendant, Thomas Evenson III, was found not guilty on first-degree murder charges on August 24 by a jury in Sitka. But the jury also told Judge Zervos that they were deadlocked on the charge of second-degree murder. This was the second trial for Evenson where there was a hung jury. Evenson has since plead to second-degree assault and is awaiting sentencing.

The third defendant, Thomas Lyons, was convicted of criminally negligent homicide and testified for the State.

An enormous amount of effort and time went into trying these three cases by Assistant Attorney General Dwayne McConnell of the Rural Prosecutions Unit, Assistant District Attorney Gregg Olson from Sitka, and Victim Witness Paralegal Elisabeth Schafer from Sitka.

Elisabeth Schafer subsequently received the honor of being named paralegal of the year for 2007 both because of the efficient and kind efforts that she puts forth day in and day out, but also for her efforts in this case. She coordinated arrangements for over 40 witnesses each time these cases were tried. Undaunted she took on the task all over again when

the hung verdicts resulted in retrials. Many of the witnesses she had to deal with were understandably frustrated but Ms. Schafer handled them all with grace and without losing a day of testimony.

### **Kotzebue**

In Noatak a father and son were indicted for attempted murder. The son fought and gained control of the victim and told his father to shoot the victim. The father pointed the muzzle at the victim's forehead and fired. The bullet hit just over the victim's left eye but glanced off his skull leaving a vertical gash running up his forehead. He played dead until the two had fled and then sought help leaving a trail of blood in the snow next to a bullet casing. Assistant District Attorney Paul Roetman will bring these cases to trial in 2008.

### **Bethel**

In a troubling case that may have ended in homicide, Assistant District Attorney Tom Jamgochian handled what was ultimately an assault by a 16-year-old defendant for strangling a 13-year-old girl. The defendant admitted, without emotion or remorse to driving the girl on a four-wheeler to a secluded area of tundra way beyond the village, strangling her until she lost consciousness, and leaving her for dead. Temperatures were near freezing that night. No relationship was involved; he stated he was simply motivated to commit a random act of violence, and did not expect anyone to find the girl nor to get caught. The young girl stumbled back into town the next morning.

### **Kenai**

A 22-year-old-son, who was convicted at trial of murder in the second degree for stabbing his mother in the back, was sentenced to 60 years in jail with 20 years suspended. A week before the mother's death the defendant said to his mother and siblings, "You all have it coming, especially you," pointing at his mother. This case was handled by District Attorney June Stein.

## PROSECUTING ALASKA'S CRIMINALS ~continued~

### Domestic Violence and Sexual Assault Cases

#### Introduction

Domestic violence and sexual assault have long been significant problems in Alaska. Because these crimes are so violent, and the victims can suffer lifetime physical and emotional effects, the Criminal Division has assigned specific prosecutors and victim witness paralegals to specialize in this area.

Through a grant funded by the federal government the Division has created domestic violence/sexual assault prosecution teams in Fairbanks, Palmer, Anchorage, and Kenai. These teams are on the front line against violent offenders. The prosecutors are assigned to the case from the beginning of the case to its conclusion, so victims need only call one person throughout the criminal justice process.

This program has proven very successful. The specialization of these prosecutors has lead to better results at trial.

Each year new prosecutors and paralegals are sent to sexual assault response training. This year 12 new prosecutors and paralegals received that training.

#### Palmer

A Palmer jury convicted 22-year-old Aric Tolen of sexual assault in the first degree, two counts of assault in the second degree and two counts of assault in the third degree. The case stemmed from an incident where Tolen, after drinking, held his girlfriend at knife point, cut her, strangled her and sexually assaulted her in the presence of two young children. Tolen had two prior felony convictions and faces 40-99 years in prison. This case was handled by Assistant District Attorney Rachel Gernat, a specialized domestic violence and sexual assault prosecutor. She was assisted by Victim Witness Paralegal Debbie Fischer, who also specializes in this area.

#### Kenai

District Attorney June Stein secured a

conviction in a sexual assault against a minor case in which the victim at the time of the offense was two-and-one-half-years old. She was four at the time of trial and the jury cried when she was introduced to them. The defendant was the mother's boyfriend and since she was the only means of support, the boyfriend babysat while she went to work. Along with sexual assault injuries, the child suffered massive head trauma and loss of hair, as well as numerous bruises to her body from the physical assault. The jury convicted on all counts.

Assistant District Attorney Scott Leaders achieved convictions on all counts in a case where the defendant sexually molested two children and possessed child pornography. He was sentenced to 37 ½ years with 18 years suspended.

#### Bethel

Historically, sexual assault and sexual abuse of minor cases have been a large part of the Bethel prosecutors' daily lives; that continued in 2007. In one such case, District Attorney Lance Joanis secured a 17-year conviction against a man who sexually assaulted a minor girl. Joanis held firm on the case, refusing to accept lesser offers.

#### Kodiak

A 24-year-old man was convicted of attempted sexual assault and physical assault. Attempted sexual assaults are historically difficult to prove because there is no physical evidence available and the only evidence is very often the uncorroborated testimony of the victim. However, this victim had been audio tape recording her dreams each night. The attempted sexual assault was recorded.

The assailant stole the recorder thinking it was a MP3 player and still had it running when he was contacted by police about an hour later. This case was handled by District Attorney Mike Gray.

Domestic violence is a tragic cycle—left unbroken the violence escalates and the victimization continues from one generation to the next. To break the cycle we must swiftly bring batterers to justice and provide intensive support to victims.

It is very difficult to prosecute domestic violence cases. Victims often recant, unrecant, and recant again. In one such case in Kenai, the victim had recanted and unrecanted several times. Assistant District Attorney Angela Jamieson, a specialized domestic violence and sexual assault prosecutor, was able to fight through all that and get convictions on several counts.

#### Anchorage

Assistant District Attorney John Skidmore from the Anchorage District Attorney's Office was named this year's prosecutor of the year. ADA Skidmore has received appreciation from women's shelters for his aggressive stance on sexual assault, sexual abuse, and domestic violence cases. He was noted for the way he exhibits an understanding and sympathetic,



Attorney General Talis Colberg presents the 2007 Prosecutor of the Year Award to Assistant DA John Skidmore.

## **Domestic Violence and Sexual Assault Cases ~continued~**

yet professional, approach to victims. In one particular case this year ADA Skidmore prosecuted a man for strangling his wife. The assault occurred in the presence of two school-aged children. The wife recanted—the husband provided much of the financial support for the family. The children also recanted, but their initial statements were recorded, particularly the 911 call made by the 11-year-old. The trial jury heard the recanting testimony of all three and nonetheless convicted the man.

### **Bethel**

District Attorney Joe Slusser obtained a conviction against Mike Simon for one consolidated count of domestic violence assault in the second degree, and for two incidents of manual strangulation and injuring his wife with a knife. Mr. Simon

scratched the letters "N" and "L" into her arm during the course of the assault. The letters indicated Mr. Simon's hateful feelings toward his wife's relationship fifteen years ago with a black man. Simon was sentenced to seven years with three suspended. This crime was committed in Hooper Bay.

The number of domestic violence cases filed has consistently increased indicating effective police intervention and increased public awareness. In an effort to meet the needs presented by this continuously growing service area, prosecutors and victim witness paralegals receive intensive, thorough training. In October, the division provided a three-day training for all attorneys and paralegals employed in district attorney's offices across the state. The training was focused on reaching a fair resolution in domestic violence cases. Funding for the training was pro-

vided by a grant from the US Department of Justice, Office of Violence Against Women.

In addition, several prosecutors and victim witness paralegals attended other domestic violence training throughout the year to better understand the complex nature of working with these vulnerable victims.

Victim witness paralegals work closely with service providers to ensure victim needs are met while also working with prosecutors to prosecute the assaults and reduce repeat incidences of violence. The Division's victim witness paralegals work continually with victims throughout the trial process. They advise them on the status of the case and prepare them for what they may expect from trial and refer them to outside agencies that may be able to assist the victim in other ways.

## **Alcohol, Drug and Gang Cases**

### **Nome**

The Alcohol Beverage Control Board produced two jury trials in Nome for Assistant District Attorney Bob Collins. Twice, an investigator went to Nome with teenage girls who attempted to buy alcohol from bars and liquor stores. The girls were successful nearly half the time. The owner of a liquor store and a bartender were convicted by a jury of furnishing alcohol to minors and served jail time.

### **Fairbanks**

Like other offices, Fairbanks receives a high number of driving under the influence referrals. Between January and August 2007 the office received over 475 misdemeanor DUI referrals and over 30 felony referrals. This year produced some traumatic cases that the Division's staff, the victims, and witnesses will never forget.

Byron Geisinger was convicted and sentenced to 19 years in prison for driving under the influence, manslaughter, and other charges. After being up all night

drinking and spending the next day drinking as well, Geisinger decided to drive home. On the way he plowed into the back of the car of a family who was visiting Fairbanks. The father was killed and the mother and son were injured. The witnesses were so traumatized by the scene that they all had a hard time recounting it at trial. Assistant District Attorney Jason Gazewood prosecuted this case with the assistance of Victim Witness Paralegal Marja Hallsten in a trial that lasted over two weeks.

Kevin Garner was found guilty of driving under the influence, manslaughter, and failure to aid an injured person. Garner ran over a woman and then drug her approximately a quarter of a mile to his house. He left her there trapped under his car in February while he went inside and passed out in his entryway. Neighbors found the woman dead the following morning. Garner actually blew over the limit the afternoon following the incident. This case was tried by Assistant District Attorney Jeff O'Bryant and Victim Witness Paralegal Jonelle Stephens.

### **Kenai**

In Kenai in one week alone there were five felony DUI arrests. One 28 year old defendant received four DUIs within seven months. His blood alcohol concentration was between 0.18 - 0.19 in all cases. Another defendant on trial for DUI, refusal, and two counts of violating conditions of release had his friend come to court and say that he was actually the driver. However, by the time Assistant District Attorney Jean Seaton got finished dissecting the witness on the stand, the defendant put his head down on the table and announced that he would plead to all counts.

### **Drugs**

Alaska has not escaped the growing problems related to the manufacture and abuse of methamphetamines. The emergence of methamphetamine, the continued abuse of other drugs, as well as the growing abuse of prescription drugs are a few of the challenges our prosecutors face today. The Criminal Division has devoted several attorneys and paralegals specifically to prosecute drug crimes al-



## PROSECUTING ALASKA'S CRIMINALS ~continued~

### Alcohol, Drug and Gang Cases ~continued~

lowing them to specialize in the area and provide advice to others.

**Kenai** ~ In a meth lab trial that District Attorney June Stein handled, she made efforts not just to prosecute but also educate. To do so she had one of the clan-lab-certified officers come to testify in full space suit with air tanks and all in an effort to demonstrate to the jury the dangerousness of meth labs. It made the point.

**Kodiak** ~ A family pharmaceutical business came to an abrupt end when the police served a search warrant on the home of a man, wife, and 19-year-old daughter. All were indicted for multiple counts of misconduct involving a controlled substance for not only the cocaine and methamphetamine that was found, but also for multiple controlled buys into the residence by an undercover operative

working with the police department. During one controlled buy the daughter took the buy-money, gave it to her father, and the mother delivered the drugs. A trial date is pending for this case with District Attorney Steve Wallace prosecuting.

**Juneau** ~ District Attorney Doug Gardner secured an indictment for misconduct involving a controlled substance in the second degree and misconduct involving a controlled substance in the third degree for importing controlled substances to Juneau. The defendant was found in possession of 65 hydrocodone pills and 409 grams (almost a pound) of methamphetamine.

#### **Gangs**

**Kenai** ~ A group of men attacked a young man because he wanted to leave

their motorcycle gang. The leader of the gang wore a metal ring that when you looked at it spelled M-I-T-C-I-V. When punched into someone's body the ring left an imprint that spelled "VICTIM." This case is being handled by Scot Leaders with assistance from Suzette Marey and has not yet gone to trial.

**Anchorage** ~ Assistant District Attorney Rob Henderson secured the conviction of Lindsey Crumpton, a known gang member, for being a felon in possession of a concealable firearm. The firearm was discovered during a traffic stop of a gang member's car. Crumpton admitted that he owned the gun for "protection." This gave Crumpton his first felony conviction as an adult.

### Special Units and Prosecutions

#### **Fraud**

On the morning of trial in Kenai, with the jury waiting in the wings, a defendant plead to four felony charges of scheming to defraud, theft in the first degree, falsifying business records, and tampering with physical evidence. The defendant was involved in a six-year scheme to defraud and embezzle money from her employer. She had five prior convictions from embezzling money from her previous employer. She had already obtained employment with another local firm while this case was pending. District Attorney June Stein handled this case with the assistance of Victim Witness Paralegal Anna LaRoche.

The division has been monitoring the political corruption prosecution by the federal government to evaluate any possible state action.

#### **Alcohol Interdiction**

Alcohol continues to be at the root of most social problems in Alaska. This is

especially true in the rural communities, most of which are located in the western part of the State. The division has placed an assistant district attorney in Bethel who aggressively prosecutes alcohol in that hub location and the villages that are in the Yukon-Kuskokwim area. A second prosecutor is located in the Anchorage Office of Special Prosecutions and Appeals to prosecute cases arising in Anchorage that involve sending alcohol to northwest Alaska. Additionally this prosecutor spends a significant amount of time in Nome and Kotzebue and the villages surrounding these hubs. The correlation between alcohol and crime continues to be significant, and alcohol continues to be related to a number of premature deaths and injuries.

Charlie Penn was convicted of liquor importation into local option area in Fairbanks. He and a co-defendant were caught by AST bringing sixty six 750 ml bottles of distilled spirits to Shungnak. Penn was sentenced to 48 months of jail with 23 months suspended and three years of probation.

Benjamin E. Henry was convicted of trafficking alcohol without a license (i.e. making homebrew in a local option area) in Kotzebue. He received a flat sentence of 250 days jail. His co-defendant Tim L. Henry received a sentence of six months jail and agreed to testify against Benjamin Henry.

The division assisted in getting new legislation passed this year that made it a class A misdemeanor to buy alcohol from a bootlegger. It also made it illegal to knowingly possess the ingredients to make homebrew in a local option area. This is also a class A misdemeanor. While it is too early to see the results of this legislation, the division is hopeful that the prosecution of these cases will have an effect in deterring the illegal sale of alcohol.

#### **Rural Prosecution Unit**

The Rural Prosecution Unit has continued to show its success in enhancing our prosecution efforts in rural Alaska. The unit aided offices throughout the State



## ***Special Units and Prosecutions ~continued~***

including Bethel, Kotzebue, Barrow, Kodiak, and Sitka. In addition to assisting rural offices with staffing shortages, the unit is also assisting to develop the prosecution skills of the attorneys in those offices. This year the unit has traveled more to the rural offices and assisted on-site.

Several unrelated homicides occurred in Bethel in the first half of 2007. The Rural Prosecution Unit assisted by taking and resolving two murder cases, taking one complex sexual assault case to Grand Jury, completing two other trials, and handling significant motion practice and evidence hearings. In addition, several other cases were reassigned from Bethel to the unit.

The Rural Prosecution Unit took over a child pornography case from the Kotzebue office, which is staffed by a single attorney. The defendant, who was an employee of the Kotzebue School District, committed the crimes using a school computer. Neither the Kotzebue Police Department nor the assistant district attorney had access to the resources necessary to thoroughly examine the contents of a computer hard drive, and organize the images found there for trial. Assistant Attorney General Dwayne McConnell successfully achieved a felony conviction in the case.

### **Cold Case Unit**

The division's Cold Case Unit, comprised of Assistant Attorney General Pat Gullufsen and Victim Witness Paralegal Katie Paakki, has taken its first three cases to trial. All were successfully prosecuted resulting in first degree murder convictions.

After nearly three weeks of testimony, and over three days of deliberation, a Glennallen jury found Derek Sawyer guilty of first degree murder. Sawyer's young wife was shot to death as she lay in bed one late night 10 years ago. Sawyer, the only adult witness, claimed that their two-year-old child was the culprit.

In two separate trials each a month long, Mechele Linehan and her co-defendant,

John Carlin III, were both convicted of first degree murder. The pair conspired to kill Kent Leppink eleven years ago for a \$1 million life insurance policy payout, not realizing Leppink had removed Linehan as the beneficiary days before his death.

While the closure of a cold case is a quantifiable performance measure, the closure that solving a cold case brings to the family is immeasurable. This year's new DNA legislation will aid in the efforts to bring more previously uncharged crimes to trial. Excellent Trooper cold case investigations, up-to-date technology, and an excellent working relationship with law enforcement have made it possible to bring closure to families who have been waiting for justice to be served for years.

### **Appeals**

This past year, the Appeals Unit of the Office of Special Prosecutions and Appeals zealously defended the State's interests at both the Alaska Court of Appeals and Alaska Supreme Court as well as in the federal courts. Among the more noteworthy victories:

Assistant Attorney General Diane Wendlandt convinced the Alaska Supreme Court to reinstate the prosecution of a defendant charged with multiple counts of sexual abuse of a minor in *State v. Gonzales*, 156 P.3d 407 (Alaska 2007). Gonzales had fled Alaska in 1992 and, when he returned in 2002, claimed the State had unreasonably delayed in prosecuting him. AAG Wendlandt's victory reversed a contrary decision of the Alaska Court of Appeals.

Assistant Attorney General Mick Hawley convinced the Alaska Supreme Court to reinstate the prosecution of a defendant for possession of multiple images of child pornography in *State v. Koen*, 152 P.3d 1148 (Alaska 2007). Koen had claimed that the trooper's affidavit to seize the pornography did not adequately identify Koen as its possessor. AAG Hawley's victory also reversed a contrary decision of the Alaska Court of Appeals.

Assistant Attorney General Tim Terrell

convinced the Alaska Supreme Court in *State v. Parker*, 147 P.3d 690 (Alaska 2006), that a defendant had not engaged in the least serious form of exploitation of a minor and possession of child pornography where the minor was sixteen and seventeen years old at the time the photographs and video at issue were taken. AAG Terrell's victory again reversed a contrary decision of the Alaska Court of Appeals.

Assistant Attorney General Ken Rosenstein successfully defended the State's second-degree murder conviction in *Jeffries v. State*, Op. No. 6178, 2007 WL 3132398 (Alaska, October 26, 2007). At issue was whether the State could introduce evidence of the defendant's past convictions for DUI, his repeated refusals to engage in alcohol treatment, and his drinking and driving in violation of his probation and his license revocation to prove Jeffries's extreme recklessness in driving drunk. The Alaska Supreme Court said the evidence could be introduced and affirmed an opinion of the Alaska Court of Appeals saying the same thing.

### **Environmental Crime**

As a result of the largest oil spill ever on the North Slope, BP has pled guilty to a misdemeanor violation of the Clean Water Act resulting in a \$20 million fine and three years of probation. The company knowingly neglected the corroding pipelines resulting in 201,000 gallons of oil leaking onto the tundra in March 2006. Assistant Attorney General Dan Cheyette handled the case for the State.

### **Cooperative Efforts**

Criminal Division prosecutors actively worked with local and federal law enforcement and federal prosecutors to best hold offenders accountable and best protect the public. The cooperation took place during the investigation stage as well as in the decision on which prosecuting office is to pursue charges. This cooperative effort over the past year has focused on violent offenders that use firearms, child sexual abuse offenders,

## PROSECUTING ALASKA'S CRIMINALS ~continued~

### ***Special Units and Prosecutions*** ~continued~

and internet child pornography. The Project Safe Neighborhoods initiative resulted in many violent offenders initially being charged in the state system throughout Alaska and those cases being turned over to the state prosecutor placed in the United States Attorney's Office. Those offenders received significantly

more harsh sentences in the federal system than they would have received in state court. Similar cooperative efforts in the area of child sexual exploitation has resulted in maximizing the impact of the state and federal investigative and prosecution resources to best protect our children.

Criminal Division prosecutors also were actively involved in the federal, state, and local efforts in Anchorage, the Matanuska Valley, and Kenai Peninsula to address the gang problem from the perspective of prevention as well as law enforcement intervention.



Sitka office paralegal, Elisabeth Schafer, grins broadly after accepting the 2007 Paralegal of the Year Award at the annual district attorney's conference in Girdwood.



John Michael Gray, recently promoted to the position of District Attorney for the Fourth Judicial District, takes his new supervisory duties seriously as he oversees a whale kill on a visit to his Barrow office.

## 2007 Regular Legislative Session Highlights

### Introduction

Every year the Department of Law is actively involved in shaping new legislation for the State. Whether legislation is proposed by the Administration, the legislature, or even by ballot initiative, the Department often has a hand in the crafting of new laws. The year 2007 saw the passage of a number of significant laws that the Department was actively engaged in to ensure that their state purpose was accomplished in accordance with the state and federal constitution, as well as existing state law. The following are descriptions of the legislation based on the Summary of Alaska Legislation, 2007, compiled by State of Alaska, Legislative Affairs Agency, Legal Services.

### HB 90 (ch. 24, SLA 2007) -- 2007 Crime Package

- Limits serial bail hearings by requiring a defendant to propose new information before a third or subsequent bail hearing may be scheduled.
- Creates a class A misdemeanor for a felony sex offender, who has served his or her entire term of imprisonment but is still on probation, who violates certain conditions of release.
- Amends AS 11.61.128, electronic distribution of indecent material to children under 16, by prohibiting the distribution of depictions of adults engaged in indecent acts to children.
- Removes the statute of limitations for the prosecution of attempt, solicitation, and conspiracy to commit murder, hindering prosecution of a murder, and kidnapping.
- Adopts standards for a court to follow when granting credit against a term of imprisonment for time spent in a treatment program.
- Extends the maximum term of probation to 25 years for felony sex offenders.
- Adopts a one-year time limit for filing a second or subsequent application for post-conviction relief.
- Disallows the award of good time a person for any period that the sentence is served under electronic monitoring or in a private residence.
- Prohibits a person from entering licensed premises to consume or obtain alcohol, if the person has been ordered to refrain from drinking alcohol.
- Makes several changes to the prostitution laws.
- Creates a violation to fail to report serious crimes committed against an adult.
- Requires person arrested for specified crimes to submit a DNA sample for inclusion in the DNA registration system. HB 90.
- Requires that the Department of Public Safety make every reasonable effort to process DNA samples from persons within 90 days after receiving the sample.

### SB 128 (ch. 25, SLA 2007) -- Alcoholic Beverages

- Requires the Alcoholic Beverage Control (ABC) Board to create a database to record written orders of alcohol made by persons in damp local option communities.
- Requires a licensee who sends alcohol in response to a written order to check the database before sending the alcohol, so that a person may not bring in more than allowed each month by ordering from several licensees. Information in the database is confidential, and must be purged one year after entry unless

needed for criminal prosecution.

- Prohibits a licensee who ships alcohol in response to written orders from shipping alcohol to an address other than the address of the person ordering the alcohol, unless the person lives in a community with a distribution center.

- Prohibits a person residing in a local option area from purchasing alcoholic beverages from another person selling the alcohol in violation of the local option. SB 128 makes this conduct a class A misdemeanor.

- Extends the period after a local option has been adopted by a community from 12 to 24 months before another election may be held to remove the option or change the option to a less restrictive alternative.

- Provides that after a community has adopted a local option, an election removing the option or making it less restrictive may be held once in a 36-month period, rather than once in an 18-month period under current law.

- Creates a class A misdemeanor if a person residing in a dry community possesses various ingredients like sugar, yeast, and malt or any equipment with the intent to make homebrew.

- If requested by the communities of Bethel or Kotzebue, SB 128 allows the ABC Board to establish pilot community delivery sites in either community.

### HB 109 (ch. 47, SLA 2007) -- 2007 Ethics Package

- Expands bribery offenses to cover campaign contributions, makes criminal the failure of any public servant to report a witnessed bribe.
- Prohibits a public servant from

## 2007 Regular Legislative Session Highlights ~continued~

receiving a state pension if convicted of a certain type of felony.

- Narrows a general exception to the requirement that all candidates for public office file Alaska Public Offices Commission reports and requires that a candidate for public office must, unless exempted from doing so, file commission reports electronically.

- Requires the commission to administer, and registered lobbyists to complete, an annual course on lobbying ethics.

- Prohibits certain types of felons from registering as lobbyists.

- Prohibits lobbyists from providing non-exempt gifts to legislators and legislative staff at any time of year.

- Requires a registered lobbyist to report to the commission a gift to a legislator or legislative employee of food and beverage unless the gift is worth less than \$15.

- Allows a legislator or legislative employee to use a state telephone or fax machine for the legislator's or employee's own benefit or the benefit of another only if the use is minimal and occasional.

- Establishes a 60-day pre-election period during which a legislator or legislative employee may not cause publication of a political mass mailing.

- Codifies a finding by the Select Committee on Legislative Ethics that no period during a person's legislative service is exempt from ethics disclosure requirements.

- Modifies procedures for publication of information from legislative ethics disclosures and ethics complaints.

- Modifies procedures related to meetings, complaint hearings,

and other activities of the Select Committee on Legislative Ethics.

- Establishes a new prohibitions and exemptions for gifts that a legislator and legislative employee, and the immediate family members of both, may accept.

- Establishes new legislative ethics disclosure requirements and deadlines, including a general deadline of 30 days.

- Prohibits a serving legislator from directly or indirectly being compensated by a source other than the State for an act that is legislative, administrative or political.

- Adds to what a legislator must disclose in financial reports to the Alaska Public Offices Commission.

- Changes deadlines and other ethics disclosure requirements, including financial disclosure requirements, for public officials and public officers in the executive branch.

- Changes the requirements applicable to a blind trust in order to be used by a public official as an ethical means of eliminating a conflict of interest.

- Adds to the duties of the Alaska Public Offices Commission, and modifies commission procedures, in connection with financial disclosures by public officials.

- Changes the exemptions and prohibitions of the Executive Branch Ethics Act by, among other things, limiting the use of state aircraft, adding to the list of persons prohibited from lobbying for one year after leaving public office, adding to the list of persons prohibited from serving on a governing board for one year after leaving public office, and establishing a rebuttable presumption that any gift from a lobbyist to a public officer is in-

tended to influence official action.

- Establishes disclosure requirements relating to executive clemency petitions, and relaxes nepotism restrictions to allow family members to work together as public employees in certain situation.

### **HB 177 (ch. 22, SLA 2007) -- Alaska Gasline Inducement Act (AIGA)**

- Authorizes the commissioner of revenue and the commissioner of natural resources to solicit applications for and award a license for a natural gas pipeline project to transport gas from the North Slope to market.

- Provides for state reimbursement of up to \$500,000,000 of the licensee's qualified expenditures before the licensee obtains a certificate of public convenience and necessity for the project.

- Establishes a fund from which reimbursements may be made for the licensee's qualified expenditures.

- Establishes the Alaska Gasline Inducement Act coordinator in the Office of the Governor to help expedite the review and action by state agencies on issues relating to the development of the gasline project.

- Requires an applicant for the license to satisfy 20 requirements before the application for a license may be considered.

- Establishes criteria for awarding the license based on the net present value to the State of the project and the project's likelihood of success.

- Offers inducements in the form of tax and royalty provisions to persons that acquire firm transportation capacity during the first binding open season for the pro-



## 2007 Regular Legislative Session Highlights *~continued~*

ject.

- Provides remedies for disputes between the State and the licensee regarding the viability of the

project and the terms of the license.

- Requires the commissioner of labor and workforce development

to develop a job training program to train Alaskans for work on the gas pipeline project.

## 2007 Special Session Highlights

### Alaska's Clear and Equitable Share

SCS CSHB 2001(FIN) am S passed the state legislature on November 16, 2007, the 30th day of the second special session. The bill makes numerous changes to the state oil and gas production tax that was previously amended in 2006. The bill retains the net tax system established in 2006. It increases the base production tax rate from 22.5 percent to 25 percent calculated on an annual basis. There is a monthly progressivity component that raises the tax rate when the net tax value of a producer's oil and gas for a month is greater than \$30 per barrel.

The bill also contains provisions to improve the administration of the tax, such as allowing for information sharing between the Department of Revenue and the Department of Natural Resources and for certain oil and gas auditors to be hired under the exempt service, and extending the period of limitations for issuing production tax assessments from three years to six years. Additional reporting requirements and penalties are included in the bill to help

the Department of Revenue implement the net tax system.

Under the bill, deductible lease expenditures are limited to those that DOR affirmatively allows by regulation. The bill also adds additional categories of costs that may not counted as lease expenditures and so may not be deducted in calculating the production tax value. A significant change under the bill is the tem-

porary substitution of a "standard deduction" for actual operating lease expenditures for most highly productive oil fields. The bill also makes numerous amendments to the existing alternative tax credit program for oil and gas exploration and amends how transportation costs are determined for the calculation of gross value at the point of production of oil and gas.



Picture by Rick Svobodny

Attorney General Talis Colberg takes a break from a tour of his offices statewide, to chat with Nome District Attorney John Earthman's gyrfalcon, Tinsel. According to Earthman, "She is for hunting, but the only thing I caught with her all summer was the AG."

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